

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

**SANDRA BENITEZ GUTIERREZ,  
INDIVIDUALLY AND AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
ELIO GUTIERREZ AND AS NEXT  
FRIEND OF RONIEL GUTIERREZ**

**vs.**

**ACE TRANSPORTATION, INC.**

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**CAUSE NO. 1:07-CV-332**

**REGLA MERCEDES ALFONSO-RAMOS'  
MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

Intervenor files this Motion to Intervene as a Party-Plaintiff, as authorized by Federal Rule of Civil Procedure 24.

**INTRODUCTION**

**I.**

Plaintiff is Sandra Benitez Gutierrez, Individually and a s Personal Representative of the Estate of Elio Gutierrez, and as Next Friend of Roniel Gutierrez; Defendant is Ace Transportation, Inc.; Intervenor is Regla Mercedes Alfonso-Ramos.

**II.**

Plaintiff sued Defendant in the 58<sup>th</sup> Judicial District Court of Jefferson County, Texas as surviving spouse and representative of the Estate of Decedent Elio Gutierrezfor, and as Next Friend of their minor child Roniel Gutierrez, for negligence, negligence *per se*, gross negligence, and *respondeat superior* arising out of a motor vehicle accident that occurred on or about December 8, 2006 in which Decedent Elio Gutierrez was killed. Plaintiff brings claims for damages on behalf of the Estate of Elio Gutierrez for mental pain and suffering, medical expenses, funeral and burial

expenses, and death. Plaintiff brings claims for damages as Next Friend of Roniel Gutierrez for loss of consortium and mental pain and suffering. Plaintiff brings claims individually for mental pain and suffering, loss of consortium, and funeral and burial expenses. The lawsuit was removed to the United States District Court for the Eastern Division of Texas, Beaumont Division.

### III.

This Court has jurisdiction over Intervenor's Motion to Intervene pursuant to 28 U.S.C. §1332 because the suit is between citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Defendant Ace Transportation, Inc. is a corporation organized under the laws of the State of Louisiana with its principal place of business in Louisiana; Plaintiff Sandra Gutierrez, Individually and as the Personal Representative of the Estate of Elio Gutierrez, and as Next Friend of Roniel Gutierrez are residents and citizens of the State of Nevada; Intervenor Regla Mercedes Alfonso-Ramos is a resident and citizen of the State of Nevada.

### ARGUMENT

#### IV.

The Court should grant Intervenor's Motion to Intervene because her claim and the lawsuit share common questions of law and fact. Intervenor was a passenger in one of the vehicles involved in the motor vehicle accident that is the subject of this lawsuit, and brings claims against Defendant Ace Transportation, Inc. for personal injuries suffered in said accident.

#### V.

The granting of Intervenor's Motion will not result in undue delay. Intervenor's claims against Defendant share common questions of law and fact with those of Plaintiff. This lawsuit was removed from Texas State District Court on May 25, 2007. The Court's Scheduling Order was entered on August 21, 2007, with a trial date set for May 6, 2008. Written discovery and oral

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depositions are currently ongoing. Accordingly, no undue delay would be occasioned by granting Intervenor's Motion to Intervene.

#### **VI.**

The granting of Intervenor's Motion to Intervene will not prejudice either Plaintiff or Defendant. Intervenor was involved in the motor vehicle accident made the basis of this lawsuit, and issues presented in written discovery and oral depositions will be common to all parties. Indeed, Intervenor's oral deposition has already been noticed and scheduled for October 30, 2007. Allowing Intervenor to bring her claims for damages arising out of the within accident by granting her Motion to Intervene will accordingly not prejudice either Plaintiff or Defendant.

#### **VII.**

Intervenor's Motion is timely. The suit has progressed only to the early stages of written discovery and oral depositions. Intervenor seeks to bring her claims for personal bodily injuries against Defendant, which arise out of the same set of facts and circumstances as those of Plaintiff. Intervenor only recently, within the past month, learned of this pending lawsuit. Should Intervenor's Motion be denied, she will suffer unfair prejudice and harm.

#### **VIII.**

Intervenor's Complaint in Intervention has been filed along with this Motion to Intervene.

#### **CONCLUSION**

Intervenor seeks to intervene in the ongoing lawsuit arising out of a motor vehicle accident that occurred on or about December 8, 2006. Intervenor has claims against Defendant for personal bodily injuries arising out of said accident that are similar to those of Plaintiff. Granting Intervenor's Motion to Intervene will not result in undue delay, nor prejudice Plaintiff or Defendant. Intervenor's

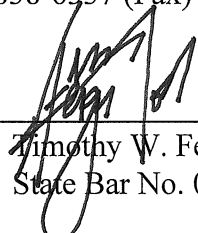
Motion to Intervene is timely filed. For these reasons, Intervenor asks the Court to grant her Motion

to Intervene as a Party-Plaintiff.

Respectfully submitted,

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By: \_\_\_\_\_

  
Timothy W. Ferguson  
State Bar No. 06929500

ATTORNEY FOR INTERVENOR

### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served on all counsel of record via Certified Mail, Return Receipt Requested on this 27 day of September, 2007.

  
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Timothy W. Ferguson